Docket No.: 1500.1005CDC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Gordon P. KURTENBACH

Serial No. 10/611,960   Group Art Unit: 2179

Confirmation No. 3561

Filed: July 3, 2003   Examiner: Mylinh T. Tran

For: METHOD AND APPARATUS FOR PRODUCING, CONTROLLING AND DISPLAYING
        MENUS

ARGUMENTS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant submits the following Reasons in support of the Pre-Appeal Brief Request for Review filed herewith.

REASONS

The following is evidence of clear error in the rejections of claims 1, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23 and 26.

Claim 1

Independent claim 1 recites a menu selection system, comprising: a display displaying a menu comprising a radial marking menu portion simultaneously displayed with a linear menu portion; a pointing device for indicating a type of selection by one of making a stroke having a direction and designating a location; and a computer connected to said display and said pointing device, and determining selection criteria for the type and a menu item selection based on a method of selection from the one of the stroke and the location, wherein **a selection from the menu is made without displaying the menu with a single, uninterrupted stroke**. (Emphasis Supplied)

At the very least, Smith does not discuss "**a selection from the menu is made without displaying the menu with a single, uninterrupted stroke**." (Emphasis Supplied)

Smith discusses an always-on-top user interface which Smith refers to as a spot interface. The spot interface is described as a sufficiently small sphere which lies over any open windows on a user's desktop. The spot interface enables a user to access any available window in a windows desktop environment without having to return to a "main" window or close other open windows. When a mouse pointer is moved into the region defined by the spot interface, a collar having four quadrants such as "Tool Bar," "S/W Suites," "Ask AST," and "Folders" is displayed automatically responsive to the detection of the mouse pointer after a user defined period of time. When the mouse pointer is subsequently moved into one of the displayed four quadrants of the collar, a secondary interface such as icons or textual options is displayed after another user defined period of time. The buttons 302d, 304d, 306d and 308d which display in the secondary interface open additional windows or initiate execution of application programs when clicked on but Smith notes that this functionality is not relevant.

It is respectfully submitted that Smith does not discuss "**a selection from the menu is made without displaying the menu with a single, uninterrupted stroke**." Regarding the above features, the Office Action, on page 3, cited to the Abstract and column 2, line 60- column 3, line 10 of Smith. In addition, the Office Action, also on page 3, asserted that Smith discusses "at the time a mouse pointer is moved to select the four menu portions (represented [by] the four radial quadrants representing menu items), the menu is not displayed yet. The menu which is

2

not displayed at the time the mouse pointer moves to select it. **The menu items are displayed after waiting a user specified length of time**."

Thus, it is very clear that Smith does not discuss that "a selection from the menu is made without displaying the menu with a single, uninterrupted stroke." It does not matter that the collar is not displayed at the time the mouse pointer is in the process of moving to select it. The collar of Smith must be displayed in order for any of the underlying quadrants to be selected. Rather, according to Smith a selection of one of the four quadrants may not be made until after the collar displays and the user waits two user specified lengths of time. The quadrants are displayed after a mouse pointer moves into the region defined by the spot interface and the user waits a first user specified length of time. Then, a selection of one of the four quadrants to display a secondary interface associated with the quadrant may not be made until the user moves the mouse pointer into the region defined by the collar and the user waits a second user specified length of time. These user specified lengths of time may be set as shown in Figure 6 of Smith. Therefore, Smith merely discusses that a selection of one of the quadrants may only be made after the collar is displayed. Further, such a selection would be interrupted by two user specified lengths of time, a first to display the collar and a second to select a quadrant. The Advisory Action merely repeated the identical rejection on page 3 of the Office Action without considering Applicant's remarks and request for reconsideration.

Finally, Smith does not discuss that "a selection may be made...with a **stroke**." Smith only notes that selection of one of the quadrants is accomplished by moving the pointer within the area defined by the displayed quadrant and selection of one of the secondary buttons by clicking the displayed button. Neither of these is a "stroke."

Therefore, it is entirely impossible for the above features to read on Smith because Smith clearly does not discuss "**a selection from the menu is made without displaying the menu with a single, uninterrupted stroke**." Therefore, the Office Action failed to establish a prima facie case of anticipation. Accordingly, Applicant submits that the rejection is clearly in error. Applicant respectfully submits that Smith does not discuss the above distinctive features and consequently, the claims are in condition for allowance.

Claim 26

Independent claim 26 recites a menu selection system, comprising: a display displaying a menu with selectable items, the menu comprising a radial marking menu sub-menu and a linear menu sub-menu, where **selectable items in the radial marking menu sub-menu are included based on a priority**; and a computer **accepting a selection of an item from the**

menu responsive to a single, uninterrupted stroke, where the selection can be made when the menu is not visible. (Emphasis Supplied)

At the very least, Smith does not discuss "**selectable items in the radial marking menu sub-menu are included based on a priority**; and a computer **accepting a selection of an item from the menu responsive to a single, uninterrupted stroke, where the selection can be made when the menu is not visible**." (Emphasis Supplied)

The Office Action, on page 3, in its omnibus rejection of claims 1, 7, 12, 15-16, 23 and 26, mentioned in passing that "where selectable items in the radial marking menu are included based on a **priority**" reads on column 6, lines 7-50 of Smith. However, Smith says nothing about selectable items in the radial marking menu included based on a priority. Smith only discusses a "Properties" menu which is a pop-up menu displayed when a user right clicks the spot interface. None of these modifiable properties of Smith's spot interface are related to "selectable items in the radial marking menu" which are "based on a priority." Even if the Examiner believes that the above features are discussed by Smith, the rejection is in error because the Office Action has not adequately articulated the grounds for the Examiner's belief by simply citing to nearly fifty lines of column 6 of Smith which fail to mention "selectable items...based on a priority."

Furthermore, for at least the reasons above, Smith does not discuss "**accepting a selection of an item from the menu responsive to a single, uninterrupted stroke, where the selection can be made when the menu is not visible**." A selection of one of the four quadrants of Smith can not be made if the collar is not visible and furthermore, as noted above, such a selection is interrupted by two user specified lengths of time.

Accordingly, applicant respectfully submits that the rejection of claim 26 is also clearly in error for these reasons. At the very least, Applicant respectfully requests that the Examiner adequately articulate a rejection before the Applicant is required to file another paper.

Claims 18

Independent claim 18 recites a method of selecting a menu selection, comprising: making a stroke in a menu comprising a radial marking menu portion simultaneously displayed with a linear menu portion; selecting a displayed first item of the menu when the stroke terminates inside the displayed first item of the menu; and **selecting, based on the stroke, a second item of the menu, when the stroke does not terminate inside any displayed items**

4

of the menu, wherein the radial marking menu portion represents a grouping of menu items based upon frequency of selection. (Emphasis Supplied)

The Office Action, on page 5, asserted that the above features read on Figures 3D and 3E of Smith. However, Smith does not say that selection may occur unless after a user specified length of time the mouse is detected to be over a displayed quadrant or displayed secondary interface button of 302d, 304d, 306d or 308d. In other words, Smith does not say that a selection may be made unless the mouse is detected over a quadrant or button and does not discuss "selecting **a second item** from the menu when **the stroke does not terminate inside any displayed items of the menu**." Furthermore, Smith fails to discuss that 302, 304, 306 and 308 are "a grouping of menu items based on upon frequency of selection." The Office Action, on page 5, asserted that 302, 304 306 and 308 are "base[d] upon frequency of selections of the four radial qua[d]rants" but failed to cite to any portion of Smith which supports this assertion. Additionally, Applicant has been unable find anything in Smith which supports this assertion and thus the rejection is in error because the Examiner has not adequately articulated the grounds for the Examiner's belief.

Accordingly, Smith does not discuss the above distinctive features and consequently, the claims are in condition for allowance. At the very least, Applicant respectfully requests that the Examiner adequately articulate a rejection before Applicant is required to file another paper.

Claims 7, 12, 13, 14, 15, 16, 17, 19, 20 and 23

For at least the reasons above, Smith does not discuss the features of claims 7, 12, 13, 14, 15, 16, 17, 19, 20 and 23. Accordingly, the rejection of claims 7, 12, 13, 14, 15, 16, 17, 19, 20 and 23 is also clearly in error.

Respectfully submitted,

STAAS & HALSEY LLP

Date: 6-1-10

By: _John R. Bednarz_
John R. Bednarz
Registration No. 62,168

1201 New York Avenue, N.W., 7th Floor
Washington, D.C. 20005
Telephone: (202) 434-1500